

REMARKS

Restriction Requirement

In the Office Action mailed August 28, 2003, the Examiner required restriction to one of the following Groups:

- I. Claims 10, 13, 19, 20, 25, 26, 30, 31, 37 and 38; and
- II. Claims 10, 25, 26, 27, and 28.

In response to this requirement, Applicant elects **Group I** comprising Claims 10, 13, 19, 20, 25, 26, 30, 31, 37 and 38. Accordingly, Claims 27 and 28 of Group II have been withdrawn. Applicant acknowledges that if linking Claims 10, 25 and 26 are allowed, the restriction requirement will be withdrawn and the claims of the non-elected Group II will then be examined.

The Examiner has also required selection of a nucleotide sequence from Claim 10. Applicant selects the nucleotide sequence set forth in SEQ ID NO: 47. Applicant also asserts that the nucleotide sequence encoding the amino acid sequence of SEQ ID NO: 50 or a coat protein-encoding fragment thereof should be examined with SEQ ID NO: 47 because both sequences encode a *Helicoverpa armigera* coat protein. Similarly, the nucleotide sequence having at least 90% identity to SEQ ID NO: 47 and the nucleotide sequence encoding a coat protein with at least 90% identity to SEQ ID NO: 50 should be examined with SEQ ID NO: 47 because all of these sequences encode a *Helicoverpa armigera* coat protein or a variant thereof.

Furthermore, Applicant asserts that it is proper for the Examiner to examine all of the nucleotide sequences presented in Claim 10 in the present application. SEQ ID NO: 39 and SEQ ID NO: 47 of Claim 10 encode the replicase and coat protein from the same organism: the *Helicoverpa armigera* stunt virus. Similarly, the nucleotide sequences encoding the amino acid sequences of SEQ ID NO: 40 and SEQ ID NO: 50, or nucleotide sequences encoding proteins with at least 90% identity with SEQ ID NO: 40 and SEQ ID NO: 50, correspond to the amino acid sequence of a replicase and coat protein from the *Helicoverpa armigera* stunt virus. Significantly, in the parent applications, USSN 09/234,238 and USSN 08/440,522, both now abandoned, claims drawn to both SEQ ID NOs: 39 and 47 were examined in the same application. Applicant asserts that the Examiner would not be subject to an undue burden if all nucleotide sequences recited in Claim 10 were examined in one application as in the prior applications. This is especially true in the instant application where the Examiner may consult the searches done in the parent applications for both the replicase and coat protein encoding sequences.

The Examiner also required selection of a nucleotide sequence from Claim 13 if Group II was elected. However, since Claim 13 is only present in Group I, this requirement seems to be in error.

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Furthermore, if there is an error it is not clear if the error relates to misidentification of the Claim or the Group. Applicant respectfully requests clarification of this request.

Applicants respectfully submit that the claims are in condition for allowance and an early notification of such is solicited.

Please direct any calls in connection with this application to the undersigned at (415) 781-1989.

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Respectfully submitted,

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